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April 8, 2015

Via ECF

The Honorable Robert M. Levy  
United States Magistrate Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: *Alba Quiñonez Flores v. United States of America, Does 1-10***  
**Case No.: 14-cv-3166 (JBW) (RML)**

Honorable Judge Levy,

This letter is respectfully submitted in response to Defendant United States of America's ("Defendant") request to stay the conducting of all depositions [ECF No. 39] until after the hearing on Plaintiff's Motion to Strike Affirmative Defenses and Defendant's Motion to Change Venue ("Motions Hearing") scheduled for May 18, 2015. Defendant's request is wholly without merit because Defendant has fully argued its position before the Court on two separate occasions and the Court issued a decision directly contrary to Defendant's request. Moreover, Defendant fails to identify any change in circumstances or other factors that affect the Court's decision. Defendant's new alternative request to compel the depositions of Plaintiff Alba Quiñonez Flores ("Ms. Quiñonez") and Wilfredo Sandoval Flores ("Mr. Sandoval") is likewise impermissible because their depositions were never authorized by the Court.

This Court held a hearing on March 4, 2015 to resolve a series of then pending discovery disputes. One of the disputed issues was whether Ms. Quiñonez could conduct four previously noticed depositions of Customs and Border Patrol ("CBP") agents prior to the Motions Hearing. Defendant exhaustively argued its position that absolutely no depositions should be conducted prior to the Motions Hearing. During the hearing, the Court intimated that it would not likely permit Ms. Quiñonez to conduct all of the noticed depositions. On March 10, 2015, the Court issued a written order requiring Defendant to make available for deposition only two CBP agents: "the intake officer at the time plaintiff was admitted to the facility at issue and the officer in charge of the facility during the period plaintiff was detained at the facility."<sup>1</sup> Thus, the Order completely resolved the issue of pre-Motions Hearing depositions by limiting them to only two CBP agents. As such there is no basis for Defendant to again attempt to raise the same issue in

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<sup>1</sup> Ms. Quiñonez has already noticed these depositions for April 30 and May 1, 2015, respectively.

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the face of the Court's binding Order ruling to the contrary and in the absence of any changed circumstances.<sup>2</sup>

Notwithstanding the Court's March 10 Order, Defendant issued a Notice of Deposition for Ms. Quiñonez (scheduled for April 27, 2015) and a subpoena for the deposition of Mr. Sandoval (scheduled for April 28, 2015) on March 31, 2015.<sup>3</sup> These depositions are not authorized by the Court's Order and at no prior point had Defendant ever stated an intent to conduct any depositions prior to the Motions Hearing. Defendant had ample opportunity before and during the March 4 hearing to request permission to conduct depositions of its own, but instead stridently maintained its position that there should be no depositions scheduled prior to the Motions Hearing. Consistent with the Court's March 10 Order and Defendant's own stated position regarding the impropriety of pre-hearing depositions, Defendant should be precluded from deposing Ms. Quiñonez and Mr. Sandoval until this case proceeds further. Depositions should remain limited to those specifically and exclusively authorized by the Court on March 10.

For the foregoing reasons, Ms. Quiñonez respectfully requests that the Court deny Defendant's request to stay the depositions previously authorized by the Court, and to deny Defendant's alternative request to compel the depositions of Ms. Quiñonez and Mr. Sandoval.

Respectfully submitted,

/s/ Ira J. Kurzban

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<sup>2</sup> Defendant has also refused outright to comply with two of the Court's oral orders issued during the March 4, 2015 hearing. Those matters have been fully briefed in Plaintiff's Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt [ECF No. 38] and the supporting papers.

<sup>3</sup> Mr. Sandoval was personally served with a subpoena for deposition on April 6, 2015.

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Cc [via ECF]:

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